



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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MARY F. MCTIGUE
DIRECTOR

December 22, 1992
AO-92-33

Ms. Mary Jo Cutler, Director
The Commonwealth of Massachusetts
Department of Education
Bureau of School Nutrition Services
1385 Hancock Street
Quincy, MA 02169-5183

Dear Ms. Cutler:

This letter is in response to your November 30, 1992 letter requesting an advisory opinion as to whether you may make a presentation of funds, raised by a political action committee (PAC)¹, to a congressman.

In your letter you state that you are a manager at the Department of Education and that you are also a member of The Massachusetts Dietetic Association (Association), a professional association which has a political action committee. You state that you are not involved in political fund raising. The Association's PAC would like to make a contribution to Congressman Joseph Moakley. You have been asked to make the formal presentation of the contribution check since you know the Congressman and you are a resident of his district. The presentation would take place in Congressman Moakley's office and you would be accompanied by a few representatives from the Association. You would take vacation time to make the presentation.

You have asked whether this presentation would be a violation of the Massachusetts campaign finance law.

1. For the purpose of this opinion, I assume that the so-called PAC is a multi-candidate political committee registered with the Office of Campaign and Political Finance ("Office"). In this case, although the state political committee would be making a contribution to a federal political committee it would still be subject to the contribution limitation set forth in M.G.L. c.55, s.6. See IB-82-01 and AO-89-14. If the PAC is a federal political committee, then the amount of any such contribution would not be an issue which the Office would address, since a federal committee would be contributing to a federal committee. However, the issue of solicitation by a state employee is still governed by M.G.L. c.55, s.13. See FEC Advisory Opinion No. 89-27.

M.G.L. c.55, s.13 prohibits political fundraising by certain public employees, but does not prevent public employees from being members of political organizations. Section 13, in pertinent part, provides:

No persons employed for compensation, other than an elected officer . . . shall directly or indirectly solicit or receive any gift, payment contribution, assessment, subscription or promise of money or other thing of value for the political campaign purposes of any candidate for public office or of any political committee or for any political purpose whatever, but this section shall not prevent such persons from being members of political organizations or committees . . .

The issue presented is whether section 13's prohibition against public employees from indirectly soliciting monies for political purposes applies to the facts of this case. Of course, section 13 also prohibits direct solicitation (e.g., asking a friend, neighbor or fellow public employee to make a contribution to a candidate or political committee).

While you have indicated that you do not participate in any fundraising activity, I note that the Office has advised that public employees must refrain from any activity which indicates support in a material way for the fundraising efforts of a candidate or political committee or for any other political purposes. For example, public employees may not permit their names to be listed on political committee stationery as officers or members if such stationery is to be used to solicit funds for the political committee (AO-84-02), public employees are prohibited from hosting or permitting a political fundraising party at their homes (AO-84-06), a public employee may not be the featured speaker or serve on a panel at any event if he or she knows or has reason to know that the fact of his or her participation as a speaker or panelist at such event has or will be used by a political committee or organization for political fundraising purposes (AO-91-25). The Office has further advised that public employees have a responsibility to use reasonable care to ensure that they are not knowingly participating in a fundraising event or permitting their participation in such an event to be used for political fundraising purposes. See IB-92-01.

Consistent with the above, the mere delivery of the check or participation in the delivery of the check to the Congressman would be a permissible event. However, the subsequent use of the event may lead to a violation of section 13. For example, a photograph or public announcement of the presentation could be placed in the PAC's bulletin in such a manner which would associate you with political fundraising activity. This could be a strong visual symbol or message

which a reasonable person might interpret as designed to encourage or induce others to give money or otherwise participate in fundraising activity. Thus, your presentation may, under these circumstances, constitute material support of certain fundraising efforts and, therefore, an indirect solicitation in violation of section 13. However, should a photograph of the event be used exclusively by you in your private or personal life, this use would be permissible.

For the reasons set forth above, it is the Office's opinion that you may present the contribution check to Congressman Moakley, provided that you exercise reasonable care to ensure that any subsequent publicity of the event is not used by either the Congressman, his political committee or the PAC to solicit funds for a prohibited political purpose.

This opinion has been rendered solely on the basis of the representations made in your letter as well as telephone conversation with the Office's legal counsel and solely in the context of M.G.L. c.55. Based on the information in your letter, I assume that you have discussed this issue with the State Ethics Commission relative to any questions that may be raised by this event under the conflicts-of-interest law, M.G.L. c.268A.

Should additional questions arise regarding any planned subsequent publicity stemming from this presentation event, or any other campaign finance matter, please do not hesitate to contact the Office. We would be pleased to address your additional concerns at that time.

Very truly yours,


Mary F. McTigue
Director